

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Frank Dunlap,
Plaintiff

v.

Joe Lombardo,
Defendant

Case No.: 2:19-cv-01166-APG-VCF

Order

I. DISCUSSION

On August 19, 2019, I dismissed this action without prejudice based on plaintiff Frank Dunlap's failure to file another application to proceed *in forma pauperis* or pay the full filing fee in accordance with Magistrate Judge Ferenbach's July 10, 2019 order. (ECF No. 4). The Clerk of the Court closed the case and entered judgment accordingly. (ECF No. 5). Almost a year later, on July 30, 2020, plaintiff filed another application to proceed *in forma pauperis* in this closed case. (ECF No. 6). Plaintiff provides no explanation for the late filing. (*Id.*)

I deny the application to proceed *in forma pauperis* (ECF No. 6) without prejudice because this is a closed case. To the extent that the application is an attempt to set aside judgment under Federal Rule of Civil Procedure 60(b)(1), I decline to set aside judgment. *See* Fed. R. Civ. P. 60(b)(1) (providing that a court may relieve a party or its legal representative from a final judgment, order, or proceeding for "mistake, inadvertence, surprise, or excusable neglect"). I have considered the factors in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*

1 *P'ship*, 507 U.S. 380 (1993) and find that the factors weigh against setting aside judgment in a
2 case where plaintiff has failed to provide an explanation for his late filing.¹

3 **II. CONCLUSION**

4 For the foregoing reasons, it is ordered that the application to proceed *in forma pauperis*
5 (ECF No. 6) is denied without prejudice.

6 It is further ordered that plaintiff may initiate a new case by sending a complaint and an
7 application to proceed *in forma pauperis* to the Clerk of the Court.

8 It is further ordered that plaintiff may not file any more documents in this closed case.
9

10 Dated: September 4, 2020

11 
12 U.S. District Judge
13
14
15
16
17
18
19
20

21 ¹ In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993), the Supreme
22 Court interpreted “neglect” to encompass “both simple, faultless omissions to act and, more
23 commonly, omissions caused by carelessness.” *Id.* at 388. In assessing whether a set-side is
justified by a party’s excusable neglect, courts apply a four-part test: (1) the danger of prejudice
to the opposing party; (2) the length of the delay and its potential impact on judicial proceedings;
(3) the reason for the delay, including whether it was within the reasonable control of the
movant; and (4) whether the movant acted in good faith. *Id.* at 395